

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

In re Patent Application of:)
DELLMO ET AL.)
Serial No. 09/761,173) Examiner: T. TRAN
Filing Date: JANUARY 16, 2001) Attorney Docket No. 51211
For: SECURE WIRELESS LAN DEVICE) Art Unit: 2134
INCLUDING TAMPER RESISTANT)
FEATURE AND ASSOCIATED METHODS) _____)

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed May 26, 2006. If any additional extensions and/or fees are required, authorization is given to charge Deposit Account No. 08-0870.

The Examiner's Assertion of Physical Combinability Is Improper

In the Response to Arguments section found on page 10 of the Examiner's Answer mailed May 26, 2006 (the Examiner's Answer), the Examiner mischaracterizes the Appellants' argument against the proposed combination of the Treadaway et al. and the Schneck et al. references in rejecting independent Claim 1 as solely "not physically combinable." The Examiner thereby disregards Appellants' arguments against the proposed combination fully discussed on pages 10-14 of the Appeal Brief filed March 17, 2006, in response to the rejection of independent Claim 1 (the Appeal Brief). In particular, Appellants argue that the Schneck access mechanism 114 decrypts pre-encrypted packaged data

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108, and thus the access mechanism 114 teaches away from mutual encryption/decryption of data packets, as required by Treadway et al. Further, the combination would destroy the operability of Treadway et al., contrary to the Examiner's assertion on page 10 of the Examiner's Answer, as the steady stream of data packets of Treadway et al. cannot be physically confined as taught by the access mechanism 114 of Schneck for deletion of internal data upon tampering, and such a combination would result in reformed data packets without an encryption tag. Additional arguments against the proposed combination appear on pages 10-14 of the Appeal Brief.

After mischaracterizing the Appellants' argument against the proposed Treadaway et al./Schneck combination as solely not physically combinable, the Examiner cites to *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983), which holds that a proposed combination need not be "physically combinable" in order to be rendered obvious to one of ordinary skill in the art. The Examiner further cites to *In Re Nievelt*, 482 F.2d 965 (CCPA 1973), for the proposition that combining a number of teachings does not involve an ability to combine their specific structures.

In re Sneed is distinguishable from the present application as involving a mechanical invention with frequent discussions of physical combination of prior art references and a prior art reference qualifying as analogous art, unlike the Schneck patent. On pages 12-13 of the Appeal Brief, Appellants emphasized that Treadaway et al. relates to the encryption/decryption of Ethernet data packets transmitted at a megabit-per-second rate over a wireless LAN link, and includes no proper suggestion or motivation to combine with a tamper detection mechanism for packaged data sold to a user and secured.

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within the physical bounds of a laptop computer, as in Schneck et al. In re Sneed involved a patent for laying a flexible pipe in temporarily supplying water or gas to an oil drilling rig. Sneed argued against a combination involving a Nelson reference disclosing a collapsible hose and a reeling method, as it fails to disclose a flexible pipe. The Court held that it would have been obvious to one of ordinary skill at the time of the present invention to utilize the Nelson method with a flexible tube, as disclosed by other references, since the Nelson reference is analogous art.

Similarly, In Re Nievelt is also distinguishable as involving a mechanical invention with frequent discussions of physical combination of prior art references and an analogous art reference. The claim involved a shield for protecting a roof vent pipe, and Nievelt argued against a proposed combination of an Elkerton reference disclosing a hook-like structure with a long inner member in a Blanchard chimney cap reference, maintaining that Blanchard is concerned with a dissimilar problem of heating a chimney.

Accordingly, the Examiner has not only mischaracterized Appellants' argument against the proposed Treadaway et al./Schneck combination, but has cited legal holdings discussing mechanical inventions and physical combination of such prior art references, vastly dissimilar from the present invention. These legal holdings are simply not applicable to the present case. Moreover, the Examiner can point to no legitimate teaching or suggestion in the prior art to overcome the clear teaching away of the proposed combination, as articulated in pages 10-14 of the Appeal Brief. It is therefore submitted that the Examiner is impermissibly using the claimed invention in hindsight as a

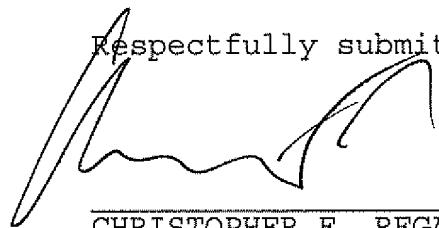
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template or roadmap to piece together the prior art, and that the rejection of the claims should be reversed.

CONCLUSIONS

In view of the foregoing arguments, it is submitted that all of the claims are patentable over the prior art. Accordingly, the Board of Patent Appeals and Interferences is respectfully requested to reverse the earlier unfavorable decision by the Examiner.

Respectfully submitted,



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